

IN THE SUPREME COURT OF BELIZE, A. D. 2018

CIVIL APPEAL NO. 2 OF 2018

(MILLICENT ELLIOT TYLER

APPELLANT

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BETWEEN (AND

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(THE REGISTRAR OF LANDS

RESPONDENT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mr. Said Musa, S.C., of Musa and Balderamos for the Appellant

Ms. Agassi Finnegan and Ms. Lavinia Cuello, Crown Counsel from the Attorney General's Ministry for the Respondent

J U D G M E N T

Facts

1. This is an appeal against a decision of the Registrar of Lands contained in an Order by the Registrar dated March 12th, 2018 that a Caution lodged against property owned by the Appellant should remain in place. Mrs. Millicent Tyler asserts that she is the registered proprietor of Block 45, Parcel 1276, Fort

George/Pickstock Registration Section (“The Property”) by virtue of her open, peaceful and uninterrupted possession of the property for a period of over twelve years (33 years). A Land Certificate dated 1st September, 2015 was accordingly issued to her after she had satisfied the requirements of Section 138 of the Registered Land Act Chapter 194 of the Laws of Belize (“The Act”). No objection was raised by anyone to the issue of title to the Appellant. By a notice in writing dated 4th January, 2017, the Appellant was informed by the Respondent, the Registrar of Lands, that a Caution had been lodged against her title by one Boadicea Elliott Khan. The caution was supported by a statutory declaration in which the cautioner alleged that she is in fact the daughter of the Deceased Wilberforce Elliott and that she is claiming an interest in the property. Upon receipt of the notice from the Registrar, the Appellant’s attorney wrote to the Registrar by letter dated 16th February, 2017, applying for Notice to be served on the Cautioner warning the Cautioner that her Caution will be removed at the expiration of the time stated in accordance with Section 132(2)(a) of the Registered Land Act. On the 8th November, 2017 the Appellant was informed that the Cautioner objected to the removal of the Caution. The Registrar of Lands then invited the Appellant by letter dated December 27th, 2017 to attend a hearing either

personally or by her attorney on 5th February, 2018 at 10:00 a.m. to determine why the Caution should be removed. The Appellant and her attorney attended before the Registrar for the hearing, but the Registrar adjourned the hearing as neither the Cautioner nor her attorney was present. On the adjourned day of March 8th, 2018, the Appellant attended but the Appellant's attorney was engaged in Court and had so informed the Registrar. The Cautioner and her attorney were present. The Registrar proceeded to conduct the hearing and made an order that the Caution should remain in place. The relief sought by the Appellant is that the Court grants orders directing the Respondent to remove the caution from the Appellant's property, as well as an order declaring the Appellant's title to be absolute and free from all other interests and claims. The Appellant also asks the court for an order directing the Registrar to correct the acreage of the parcel of land ("the Property") and to delete the Proprietor's description "*as Administratrix of the Estate of Elizabeth Elliott, deceased*".

Grounds of Appeal

2. The Learned Registrar conducted the hearing on 8th March, 2018 in the absence of the Appellant's attorney who had informed the Registrar that he

was engaged in Court on that date, while the Cautioner's attorney presented legal arguments at that hearing.

3. The Cautioner presented no evidence to the Learned Registrar to challenge the Registered Land Certificate of the Appellant which was properly issued based on prescription.
4. The Appellant acquired ownership of the property by prescription under Section 138 of the Registered Land Act Chapter 194 of the Laws of Belize, and her application to the Registrar to be registered as a proprietor was accepted and she was issued Land Certificate dated 1st September, 2015. The decision of the Registrar not to remove the Caution was therefore manifestly wrong.
5. The Caution lodged against the property on 4th January, 2017, 1 year and 4 months later was unreasonably delayed and ought not to have been entertained by the Registrar.

Issues

6. i) Whether the Registrar of Lands erred when she decided on the 8th day of March, 2018 to maintain a caution on the property.

ii) Whether the Cautioner has an unregistrable interest over the said property.

iii) Whether the relief sought is one that the Appellant can get by way of an Appeal

Legal Submissions on behalf of the Appellant

7. Mr. Musa, S.C., first sets out the historical background tracing how the Appellant came to be the registered title holder of this property. A copy of the Title search (Exhibit "MT 12") shows the property was originally numbered 1300 on the official plan of Belize City owned by Roman Catholic Church which sold the property to Wilberforce McLennan Elliott on 4th March, 1957 by a Transfer Certificate of Title. The said W.M. Elliott died Intestate 15th January, 1966 survived by his mother Elizabeth Elliott, two sisters Pricilla and Eugenie (Jean), and his son Wilberforce F. Elliott. Letters of Administration in the Estate was granted to his mother Elizabeth Elliott who transferred the property to herself. A portion of the lot (the North Western portion) was transferred to Darrell Colin Diaz in June 1967. Elizabeth Elliott died on the 23rd April, 1971 and her Will was probated by Eugenie Elliott and Pricilla Elliott, her two daughters, to whom she devised all her

estate as joint tenants. Pricilla Elliott died 6th July, 1984 when the property passed by law to the surviving tenant Eugenie Elliott. Eugenie Elliott died June 1990 intestate without completing Administration of the Estate of Elizabeth Elliott. Elizabeth Elliott handed over "*ownership and possession*" of the Property to the son of Wilberforce M. Elliott, her nephew Wilberforce F. Elliott (Husband of the Appellant). The evidence for this are the letters she wrote to G. A. Roe about the insurance of the property informing therein that "*the ownership of the house situated at 79 Freetown Road, Belize City has been handed over to Mr. Wilberforce Elliott. As the new owner of the property, he will be responsible for the insurance*". Elizabeth Elliott also wrote the Town Clerk by Belize City Council to inform that the property at 79 Freetown Road is the property of Wilberforce Elliott Jr. who has arranged for all taxes to be paid by his agent D. A. Diaz. These two letters are attached as Exhibits "MT 2" and "MT3" respectively. Thereafter the insurance premiums and property taxes were paid in the name of Wilberforce E. Elliott who assumed ownership and control of the property, having appointed Mr. Diaz as his agent to collect the rents, pay the taxes and carry out the necessary repairs to the property. Wilberforce F. Elliott died on 22nd June, 1994, and a Grant of Administration of his estate was made to Millicent Elliott, his widow,

who is the Appellant. The Devolution in the grant recited that the property devolved to the said Millicent Elliott the Appellant as to one third of the residuary estate and two thirds to the three children of the deceased and the Appellant as stated in the Title Search Report. The Grant of Administration of the estate of Wilberforce F. Elliott is attached as "Exhibit MT 6".

No objection or claim was made by anyone to the Grant of Administration to the Appellant.

8. Mr. Musa, S.C., then refers to Section 139 (1) of the Registered Land Act Chapter 194 of the Laws of Belize:

"Where it is shown that a person has been in possession of land or in receipt of the rents or profits thereof at a certain date and is still in possession, it shall be presumed that he has from that date been in uninterrupted possession of the land or uninterrupted receipt of the rents and profits until the contrary is shown."

On behalf of the Appellant, Learned Counsel submits that Wilberforce F. Elliott and Millicent Elliott have been in possession of the property from the 25th January, 1985 as per the date of letter sent to the G A Roe & Sons Insurance Company by Eugenie Elliott. In addition, the tax statements in

evidence as Exhibits “MT 5” and “MT8” clearly show that since 1990 all the taxes for House No. 79 Freetown Road, Lot No. 1300, have been paid in the name of either Wilberforce Elliott or Millicent Elliott. After her husband died in 1994, the Appellant became solely responsible for the property and has continued to pay taxes and other outgoings on the property to this day.

As stated in her affidavit, the Appellant says that she and her husband have been in open, peaceful and uninterrupted possession of the property since 1985 up until the death of her husband in 1994. Thereafter she has been in open, peaceful and uninterrupted possession up until present. The law is clear that possession of land or receipts of rents or profits thereof by the husband through whom the Appellant derives her possession shall be deemed to be possession or receipt of the rents or profits by the Appellant. The evidence is that the Appellant not only paid property taxes and other outgoings on the property but also rented the house on the property and had various agents collect rent on her behalf, starting with Mr. Darrell Diaz, and after his passing, his wife Sylvia Diaz, then later Mrs. Margaret Lightburn, and finally Ms. Carla Sebastian of Lavender Chambers at 52 Regent Street, Belize City, Belize. A bundle of receipts from various hardware stores are also in evidence to show that over the years the Appellant has paid

substantial sums for materials to effect repairs and maintenance on the property.

Mr. Musa, S.C., further makes the point that there has been no interruption by anyone in accordance with Section 139(6) of the Registered Land Act whether by dispossession, or the institution of legal proceedings by any proprietor asserting rights to the property, nor has the Appellant acknowledged the Claim of any person to be the proprietor thereof. The Appellant applied for registration as proprietor under Section 138(1) and Section 138(3) of the act in her own right to ownership acquired by prescription. She did not possess the property in “*a judiciary capacity on behalf of another*” whether as trustee or otherwise.

9. Mr. Musa, S.C., submits that the Appellant acquired ownership of the property by prescription in accordance with Section 138 and 139 of the Registered Land Act. He relies on ***Richardson v. Lawrence*** (1966) 10 W.I.R. in support of the Appellant’s Title by Prescription where Wooding CJ held that so long as there has been a want of actual possession on the part of somebody who might be entitled to the property, and an actual possession by somebody who would not be entitled to it, and that actual possession

continues for the prescribed period, a possessory title is acquired under statute. In this Appeal, not only did the Appellant claim to be entitled based on possession but her application to be registered as the proprietor was accepted by the Registrar of Lands and she was issued with a Land Certificate certifying that she is now registered proprietor with title absolute of Block 45, Parcel 1276, and a copy of the Land Certificate is attached. Mr. Musa, S.C., cited the Privy Council decision of ***Cobham v. Frett*** 2000 59 WIR 161 where the Board held that in order to establish a title to land under the Registered Land Ordinance 1970 of the British Virgin Islands (similar to Belize's Section 138 of the Registered Land Act), a person claiming a prescriptive title must establish that he was in peaceable, open and uninterrupted possession without permission for the prescribed period and the acts of possession must be clear and unequivocal. Intermittent activities such as cutting down trees, occasional grazing of animals or removing sand for building purposes do not (either separately or cumulatively) constitute clear and unequivocal acts of adverse possession. Mr. Musa, S.C., submits that the Appellant has clearly established possession by paying the taxes and insurance, by renting the house on the property and collecting the rents thereof, and by carrying out repairs and maintenance to the property since

1985 to the present. This is clear and unequivocal evidence of uninterrupted possession. By the time a caution dated 8th September, 2016 forbidding the registration of all dealings in respect of the property was filed by Boadicea Elliott Khan, the Appellant had been in possession of the property and the dwelling house thereon for over 31 years. The Appellant had already obtained her Land Certificate dated September 1st, 2015. Section 130(1) of the Registered Land Act provides for the lodging of a Caution with the Registrar by any person who has a registrable interest in land, lease or charge forbidding the registration of dispositions of the land, lease or charge concerned and in the making of entries affecting the same. Mr. Musa, S.C., submits that to this day it is not known what is the unregistrable interest that the Cautioner was claiming, as the Registrar did not state the nature of the interest claimed by the Cautioner. In deciding whether the Caution should stay in place the Registrar did not give any reason for her decision under Section 132(2)(c) of the Registered Land Act which states that the Registrar after giving the parties an opportunity of being heard, shall make such order as he thinks fit, and may in the order make provision for the payment of costs.

According to Section 26 of the Registered Land Act, the registration of any person as proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and principles belonging or appurtenant thereto free from all other interest and claims whatsoever but subject to:

- a) To the leases, charges and other encumbrances and to conditions and restrictions if any shown on the register
- b) Unless the contrary is expressed on the register to such liabilities, rights and interests as affect the same and are declared by Section 31 not to require noting on the register (overriding interests).

Learned Counsel further submits that no such liabilities, rights and interests (such as easement, or agreement for leases for a term less than two years) were claimed as unregistrable interests to justify the Caution remaining on the property. Even after the Cautioner was informed that the Caution remained in place, the Cautioner Ms. Khan has not applied for rectification of the register by the Registrar under Section 142 of the Registered Land Act, nor has she made any application to the Court alleging that the registration has been obtained by fraud or mistake under Section 143 of the Registered Land Act. Mr. Musa, S.C., relies on *Thomas v Johnson* (1997) 52 WIR 409,

where the Privy Council made a clear distinction between the limited powers to amend the Register by the Registrar in formal matters as in the case of errors or omissions not materially affecting the interest of any proprietor, and the power of the Court to rectify the register by cancelling an otherwise indefeasible title where it is satisfied that any registration including a first registration has been obtained by fraud and mistake (Section 143 of the Registered Land Act). He also cites the Privy Council decision in ***Santiago Castillo Ltd. v Quinto*** (2009) UKPC 74 WIR 217 where mistake or fraud was held to be essential to prove in order to obtain rectification under Section 143 of the Registered Land Act.

10. In conclusion, Mr. Musa, S.C., submits on behalf of the Appellant that:

- i. No evidence has been presented to the Learned Registrar to challenge the issue of the Registered Land Certificate to the Appellant dated 1st September, 2015.
- ii. The said Registered Title of the Appellant was properly issued based on prescription under Section 138 of the Registered Land Act.

- iii. The decision of the Registrar not to remove the Caution was manifestly wrong and unwarranted or at the very least wholly unreasonable and arbitrary.
- iv. The Caution lodged against the Appellant's registered land Certificate on the 4th January, 2017, one year and four months after the issue of the Land Certificate by the Land Registry, should not have been entertained by the Registrar so long after the Land Certificate was issued. This Caution has caused an unnecessary clog on the title of the Appellant preventing her from registering any disposition of the property including conferring interests to her children who also have beneficial interests in the estate of her late husband.
- v. At this stage, the Title of the Appellant cannot be fettered in the absence of proof of fraud or mistake, none of which has been forthcoming from the Cautioner. The Registrar therefore erred in not removing the Caution.

Legal Submissions on behalf of the Respondent

11. Ms. Agassi Finnegan on behalf of the Registrar submits that the caution placed on the title was supported by a statutory declaration from the Cautioner alleging that she was the daughter of Wilberforce McLennan Elliott who died on 15th January, 1966, and as such she is the sister of Wilberforce Elliott, the Appellant's husband. Learned Counsel submits that issues 1 and 2 are both closely related as the question whether the Cautioner has an unregistrable interest in the property will inform whether the caution should have been maintained. She cites section 130 of the Registered Land Act, Chapter 194 as follows:

“(1) Any person who

(a) Claims an unregistrable interest whatever in land or a lease or a charge;

(b) Is entitled to a licence; or

(c) Has presented a bankruptcy petition against the proprietor of any registered land, lease or charge,

may lodge a caution with the Registrar forbidding the registration of dispositions of the land, lease or charge concerned and the making of entries affecting the same.”

Wilberforce McLennan Elliott died intestate; his mother, Elizabeth was granted Letters of Administration in his estate. By virtue of her appointment, she applied for and was granted a transfer certificate of title over the property issued in her name as Administratrix of the estate. Ms. Finnegan submits that the effect of such a grant is for the Administrator to carry out the full and complete administration of the estate of the Deceased in accordance with the Laws of Belize; it does not give rise to the rule of survivorship and as such an administrator is precluded from bequeathing same. In Belize, estates and administration of such is governed by The Administration of Estates Act, Chapter 197 of the Laws of Belize. Therein the law specifically provides the order of distribution of assets of the estate in circumstances where a person dies intestate. Section 54 provides:

“54(1) The residuary estate of an intestate shall be distributed in the manner mentioned in this section, namely,

(a) If the intestate leaves a wife or husband, with or without issue, the surviving wife or husband shall take the personal chattels absolutely, and the residuary estate of the intestate, other than the personal chattels, shall stand charged with the

payment of a net sum of six hundred dollars free of costs to the surviving wife or husband.

(b) If the intestate leaves no issue, the surviving wife or husband shall, in addition to the interests taken under paragraph (a) of this subsection, take one-half of the residuary estate absolutely;

(c) If the intestate leaves issue, the surviving wife or husband shall, in addition to the interests taken under paragraph (a) of this subsection take one-third only of the residuary estate absolutely, and the issue shall take the remaining two-thirds of the residuary estate absolutely;

(d) If the intestate leaves issue, but no wife or husband, the issue of the intestate shall take the whole residuary estate absolutely;

(e) If the intestate leaves no issue but both parents, then, subject to the interests of the surviving wife or husband, the father or mother of the intestate shall take the residuary estate of the intestate absolutely in equal shares.

12. Ms. Finnegan argues that looking in consideration of the fact that Elizabeth Elliott was the legal Administratrix of the estate of Wilberforce M. Elliott and in looking at the order of distribution of assets under the law, the assets of Mr. Elliott ought to have been distributed firstly to his wife, if any, and thereafter to his children. The order of distribution dictates that the assets would be distributed firstly $\frac{1}{3}$ to the wife and the remaining $\frac{2}{3}$ to the children. The facts do not suggest that a wife was present but instead his mother was appointed as his Administratrix. As such, the new order of distribution of assets would concern the children of Wilberforce M. Elliott only, since the Administration of Estates Act provides that where a Deceased dies intestate and leaves no wife, the issue shall take the whole of the residuary estate absolutely. As such, Ms. Finnegan submits that this would mean that Wilberforce M. Elliott's children would be entitled as the beneficiaries of the residuary estate and share same equally. Consequently meaning that the property in question ought to have been shared equally amongst all his children. The facts suggest that by way of an application for Caution and the supporting Statutory Declaration, Wilberforce M. Elliott died leaving at least two children behind, namely Wilberforce Elliott Jr. and Bodicea Elliott Khan. As such, in accordance with the law and order of

distribution, Elizabeth Elliott upon being appointed the Administratrix ought to have effected a transfer of the property to both children jointly. The failure of this and the fact of title being issued to the Appellant as Administratrix of the estate of Elizabeth Elliott would seem to suggest that the Cautioner, Bodicea Elliott Khan, has an unregistrable interest in the property in question. In **David Gaynair v. Registrar of Land, Colin Bull** Civil Appeal No 1 of 2017, Young J. in examining the issue of an unregistrable interest relied on the Supreme Court decision of **Lilian Riley v Christopher Gerald, Registrar of Lands and Hon. Attorney General** Claim No. MN1HCV 2004/0009 (ECSC) and highlighted that unregistrable interests in land are interests which the Registered Land Act does not recognize for the purpose of registration, but which the law recognizes. Having been seized of all the facts it would appear that, and it is submitted, that the Respondent did not err when she refused to remove the caution as instituted.

13. On the third issue, whether the relief sought is one the Appellant can get by way of an Appeal, Ms. Finnegan submits that as this matter has been brought to court by way of an appeal the Appellant must file a claim for rectification of the register. The Registered Land Act provides at section 143(1) that the

court may order the rectification of the register where the registration has been obtained by fraud or mistake:

“143(1) Subject to subsection (2) of this section, the court may order rectification of the register by directing that any registration be made, cancelled or amended where it is satisfied that any registration, including a first registration, has been obtained, made or omitted by fraud or mistake.

(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession or is in receipt of the rents or profits and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud, or mistake or substantially contributed to it by his act, neglect or default.”

In ***William Quinto v. Santiago Castillo Ltd.*** Privy Council Appeal No. 7 of

2008 it was stated that:

“Discretionary power of the court to rectify the current registration arose if any registration in the chain of title had been obtained by fraud or by mistake.”

In *Ostrov v. The AG* Claim No. 694 of 2016, Young J. applied *Quinto v. Santiago Castillo* by stating that “no correction for a mistake or fraud could be made unless the registered proprietor was a party to or aware of the mistake or fraud” and “rectification by the court is not permitted where it would prejudice a registered bona fide purchaser for value in possession”.

Ms. Finnegan submits that the Appellant received title to the property in her name as Administratrix of the Estate of Elizabeth Elliott; the Appellant is not the Administratrix of the estate of Elizabeth Elliott. The Appellant must have been aware of that mistake made in that registration; however no fraud has been made out therefore there cannot be any rectification. Failing any such claim, to ask the court to rectify the register in the circumstances of an appeal would be an abuse of the Court’s power and process.

14. Ms. Finnegan also addresses the issue of prescription raised by the Appellant. The Registered Land Act provides at Section 138(1):

“138(1) Subject to subsection (2) the ownership of land may be acquired by open, peaceful and uninterrupted possession for a period of twelve years and without the permission of any person lawfully entitled to such possession.”

The Limitation Act, Chapter 170, at section 12 provides that title to land is extinguished after 12 years where no action has been brought by the true owner to recover same.

“12(2) No action shall be brought by any other person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him, or, if it accrued to some person through whom he claims, to that person.”

In ***Ramnarace v Lutchman*** [2001] 1 WLR 165 it was stated that prescription would only arise where the acquisition is done without the permission or authorization of the title owner: *“The possession should be adverse; it should have been acquired without the permission or authorization of the paper title owner. There cannot be adverse possession of land which is enjoyed, occupied or used under a lawful title or with the permission of the true owner.”*

Ms. Finnegan submits that the Appellant’s husband Wilberforce Elliott Jr. was in use of the land by way of permission granted by his aunt Eugenie Elliott whom it was believed (albeit wrongly) owned the land. Eugenie Elliott granted this permission by way of the letters sent to the insurance company

and to the Belize City Council. The Appellant remained in use of the land by the permission of her husband. Therefore, the Appellant could not have acquired the property through prescription as there was authorization by the purported title owner at the time to use same. Additionally, the title in which the Appellant relies on clearly identifies her as the Administratrix of the estate of Elizabeth Elliott. If the Appellant's husband was in fact the only beneficial owner of the property in question, the Appellant would have no need to apply for a grant by way of prescription but in fact would have applied via transmission for a transfer in her name. In conclusion, the submission is that Bodicea Elliott Khan has an unregistrable interest in the property by way of the distribution of her father's estate under the laws of intestacy. The Appellant was authorized to be in use of the property through the authorization granted to her husband. In light of this, Millicent Elliott Tyler could not have acquired title to the property through prescription. The order sought to rectify the register cannot be granted since no fraud has been proven. The Appellant would have to bring a claim for rectification in order to have the register rectified.

Decision

15. I am grateful to counsel for both parties for their submissions on this appeal.

Having considered the submissions and the evidence in this appeal, I am of the respectful view that the Appeal should be allowed. The gravamen of the Cautioner's case as presented by the Respondent appears to be that she has an unregistrable interest in the property because she is a daughter of Wilberforce M. Elliott and she is therefore entitled as a beneficiary of his estate pursuant to section 54 of the Administration of Estates Act.

The error, as set out in the submissions filed by Learned Counsel for the Respondent, occurred when Elizabeth Elliott, mother of Wilberforce Elliott, as Administratrix of his estate in 1967, failed to distribute that estate according to the laws of intestacy by ensuring that the estate was divided equally among his children (i.e., Wilberforce F. Elliott Jr. and Bodicea Elliott Khan, the Cautioner. While there may very well have been a mistake made in the disposition of the assets of the deceased Wilberforce M. Elliott Sr. after his death in 1957, the fact of the matter is that the Appellant is presently in possession of an indefeasible title issued to her by the Lands Registry. The Cautioner makes serious allegations of fraud in the statutory declaration against the Appellant as registered title holder of the property, but these

appear to be unsubstantiated. The evidence shows that the Appellant and her husband have been in possession of this property for the past 33 years, and it has been proven that they have been in receipt of rents of the property as required by Section 139 of the Registered Land Act. As rightly pointed out by Mr. Musa, S.C., the Grant of Administration in the estate of the Appellant's husband Wilberforce Elliott Jr. was issued to Mrs. Tyler in 1994 without objection from The Cautioner or from anyone else. This was followed by registration of title issued in the name of Millicent Tyler in 2017 as proprietor of the property, again without objection from the Cautioner or anyone else. In addition, the fact that Mrs. Tyler and her husband exercised full control of this property for the past 33 years, to the exclusion of all others, weighs heavily in the favor of the Appellant. There has been no explanation given to the Registrar for the unreasonable delay by the Cautioner in lodging this Caution or taking any steps to protect the interest she claims as beneficiary of the estate of Wilberforce M. Elliott. I also note that to date there has been no claim in the Supreme Court by the Cautioner to challenge the Grant of Administration to Millicent Tyler or to seek rectification of the register on the ground of Mistake or Fraud. I agree with Mr. Musa's submission that in the absence of proof of mistake or fraud, the Cautioner should not be allowed

by the Registrar to clog the absolute title of the Appellant with this caution. As rightly stated by Young J. in Civil Appeal No. 1 of 2017 **David Gaynair v. Registrar of Lands and Colin Bull**, a Caution functions in a similar manner as an injunction; it is a temporary measure designed to preserve the status quo and preserve the interest of the Cautioner until the court can determine the matter. A Caution is not intended to be permanent, as it is a very powerful instrument which fetters the absolute title of a registered land owner. Having noted from the Application Form attached to the affidavit of Millicent Tyler dated 14th June, 2018 (“**Exhibit MET 1**”) that the Appellant applied for First Registration of Title in her personal capacity and not as Administratrix of any estate, I conclude that the issue of title to the Appellant as Administratrix of the Estate of Elizabeth Elliott was a formal error on the part of the Registry. As that is a formal mistake on the face of the title, the Court orders that the title be rectified by the Registrar to show that Millicent Tyler is proprietor of the property in her own right, and not as Administratrix of the Estate of Elizabeth Elliott. The Appeal is therefore allowed and the Registrar is directed to remove the Caution forthwith. Costs awarded to the Appellant by to be paid by the Respondent to be agreed or assessed.

Dated this Friday, 19th day of July, 2019.

**Michelle Arana
Supreme Court Judge**